



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/611,355      | 07/06/2000  | Cary Gresham Bayne   | CDOC-002            | 6374             |

7590 08/11/2004

Bernard L Kleinke  
Duckor Spradling & Metzger  
Suite 2400 401 West A Street  
San Diego, CA 92101-3666

EXAMINER

PASS, NATALIE

ART UNIT PAPER NUMBER

3626

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/611,355

Applicant(s)

BAYNE, CARY GRESHAM

Examiner

Natalie A. Pass

Art Unit

3626

NW

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 31-61, 69-71.

Claim(s) withdrawn from consideration: 1-30 & 62-68.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: Form 892

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Continuation of 2. NOTE: The newly proposed addition to claims 31, 47, and 69, is a significant shift in the scope of the claims as previously presented and would require further search and consideration.

Continuation of 3. Applicant's reply has overcome the following rejection(s): The rejection of claim 69 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention will be withdrawn upon entry of the amendment proposed on 6 July 2004.

Applicant's intent to withdraw claims 1-30 and 62-68, drawn to an invention nonelected with traverse in Paper No. 10, is hereby noted. However, since the amendment cannot be entered in part, the status of the claims remains as withdrawn.

Continuation of 5. does NOT place the application in condition for allowance because:

i. As per claims 31-61, 69-71, in response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed Cir. 1986). In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In particular, as demonstrated in the rejections of claims 31-61, 69-71 in the prior Office Actions (mailed 5 December 2003 and 5 May 2004), the combined cited references of Iliff, Reuss and Vogue, teach accessing a computer database to select appropriate personnel according to a response description to make a non-emergency house call and executing a computer program to request screening information from the patient (Iliff; see at least Figures 24, 25b, 26-30, Abstract, column 14, lines 49-56, column 25, line 48 to column 26, line 45, column 28, line 55 to column 29, line 11, column 41, line 54 to column 42, line 25, column 61, lines 3-34, column 67, line 20 to column 68, line 44, column 69, line 16 to column 71, line 51, column 72, line 54 to column 73, line 30, column 76, line 44 to column 77, line 19), (Vogue; column 3, lines 2-14).

ii. Applicant rehashes arguments previously addressed in the Final Office Action. In particular the motivation to combine the applied references as fully explained in the Final Office Action is, in the Final Office Action (mailed 5 May 2004), accompanied by select portions of the respective references which specifically support that specific motivation. In addition, in arguing currently amended limitations, Applicant argues features which have not been entered as of the present communication. Other arguments merely re-hash issues addressed in the Final Rejection, mailed 5 May 2004, and incorporated herein.